84-1358 (1)

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CLERK

NO.

in the
Supreme Court
of the
United States

OCTOBER TERM 1985

LEO GREENFIELD and
LEO GREENFIELD, P.A.,

Petitioners,

vs.

THOMAS D. WOOD,
Trustee for TOWER 2450, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

HARVIE S. DUVAL,
Attorney for Petitioner
1680 N.E. 135th Street
North Miami, FL 33181
(305) 893-9270

54

THE QUESTIONS PRESENTED

1.

WHETHER THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT, AFFIRMING THE JUDGMENT OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, AFFIRMING THE JUDGMENT OF THE UNITED STATES BANKRUPTCY COURT, SOUTHERN DISTRICT OF FLORIDA, CONFLICTS WITH APPLICABLE BANKRUPTCY RULE 10-215(b) IN SUCH A WAY AS TO REQUIRE CERTIORARI TO ISSUE TO REVIEW THE JUDGMENT AND TO VACATE THE SAME.

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CITATIONS

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Rule 10-215(b), Bankruptcy Rules	4, 5, 6, 7, 8, 9, 10, 14, 16

NO.

in the Supreme Court of the United States

OCTOBER TERM 1985

LEO GREENFIELD and
LEO GREENFIELD, P.A.,

Petitioner,

vs.

THOMAS D. WOOD,
Trustee for TOWER 2450, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals, Eleventh Circuit, entered on October 18, 1984, and an Order Denying a Petition for Rehearing on November 28, 1984.

OPINIONS BELOW

Order for Debtor's Attorney's Fees, dated March 31, 1980, Appendix A hereto.

The Order on Application to Reconsider Fee entered by the United States Bankruptcy Court, Southern District of Florida, on May 28, 1982, Appendix B hereto.

The Order entered by the United States District Court, Southern District of Florida, on July 27, 1983, Appendix C hereto.

The Order entered by the United States Court of Appeals for the Eleventh Circuit, on October 18, 1984, affirming the Judgment of the United States District Court, Southern District of Florida, Appendix D hereto.

The Order from the United States Court of Appeals for the Eleventh Circuit, on November 28, 1984, denying Rehearing, Appendix E hereto.

JURISDICTION

The Judgment of the United States Court of Appeals was entered on October 18, 1984. A Petition for Rehearing was denied on November 28, 1984.

Jurisdiction of this Court is invoked under Title 28, United States Code Section 2101(c).

THE QUESTIONS PRESENTED

1.

WHETHER THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT, AFFIRMING THE JUDGMENT OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, AFFIRMING THE JUDGMENT OF THE UNITED STATES BANKRUPTCY COURT, SOUTHERN DISTRICT OF FLORIDA, CONFLICTS WITH APPLICABLE BANKRUPTCY RULE 10-215(b) IN SUCH A WAY AS TO REQUIRE CERTIORARI TO ISSUE TO REVIEW THE JUDGMENT AND TO VACATE THE SAME.

BANKRUPTCY RULE INVOLVED

This Petition grows out of the interpretation as to the disclosure requirements of Bankruptcy Rule 10-215(b) which provides:

> (b) **Disclosure of Compensation Paid or Promised to Attorney for Debtor**
>
> Every attorney for a debtor, whether or not he applies for compensation, shall file with the court on or before the first date set for the meeting held pursuant to Rule 10-212, or at such other time as the court may direct, a statement setting forth the compensation paid or promised him for the services rendered or to be rendered in connection with the case, the source of the compensation so paid or promised, and whether the attorney has shared or agreed to share such compensation with any other person. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of his compensation with a member or regulation association of his law firm shall not be required.

STATEMENT OF THE CASE

On or about March 16, 1978, LEO GREENFIELD, P.A., ("GREENFIELD"), was employed by TOWER 2450, INC., ("TOWER"), to file on behalf of TOWER a Voluntary Petition for Bankruptcy for Reorganization under Chapter X of the Bankruptcy Act.

GREENFIELD represented TOWER throughout the proceedings and on March 13, 1980, GREENFIELD filed an Application, as Debtor's attorney, for allowance of compensation, for services rendered in the Chapter X proceeding, Appendix F.

On March 31, 1980, the Bankruptcy Court entered its Order, awarding GREENFIELD the sum of $43,000.00 as attorney's fees for Debtor, and $3,754.00 as costs, Appendix A.

On November 18, 1981, Miami National Bank, a creditor of TOWER filed an "Application for the Court to Reconsider Fees Awarded to Counsel for Debtor and Vacate the Same and Direct Counsel for the Debtor to Return to the Estate all Fees Paid under the Award Made by the Court." Appendix G.

The Application alleged that GREENFIELD failed to make full disclosure in violation of Bankruptcy Rule 10-215(b).

GREENFIELD filed his response to Miami National Bank's Application, denying he failed to fully comply with the disclosure requirements of Rule 10-215(b), Appendix H.

Miami National Bank thereafter refused to prosecute its Application, and after an informal hearing the Bankruptcy Court appointed Special Counsel for the purpose of prosecuting the Motion.

On April 1, 1982, an evidentiary hearing was conducted and after conclusion, the Bankruptcy Court on May 28, 1982, entered its Order vacating the fee awarded and ordered GREENFIELD to return the fee of $43,000.00 plus costs to the Estate, Appendix B.

The Bankruptcy Court based its Judgment on two findings of fact, as follows:

> 4. The Court finds as hereinafter set forth that there were matters that should have been made known to the Court that were not. On January 1, 1977, Leo Greenfield filed with the Miami National Bank a financial statement indicating that he was the owner of 333⅓rd shares of the stock of the Debtor. This Court was not aware of Greenfield's interest in the corporation and even if Greenfield was not the owner of said shares at the time of his application as alleged by him during these proceedings, the Court is of the opinion that Greenfield was duty bound under the provisions of Bankruptcy Rule 10-215(b) to disclose these facts to the Court.
>
> 5. Leo Greenfield's sworn Affidavit for Compensation indicated in Paragraph 5(e) that during the course of the entire bankruptcy proceeding and for at least two years prior to the institution of the reorganization petition,

> he had worked without benefit of payment of any fees. Testimony elicited at the hearing on the Application to Reconsider indicated that this was not the case. Leo Greenfield, by his own admission, testified that he had received an apartment, specifically apartment 1002 of the Waterside Apartments, formerly Tower 2450, which apartment was conveyed to Greenfield in consideration and for payment of services rendered by him to the Debtor prior to the commencement of the Chapter X proceedings. The Court is of the opinion that this matter should have been disclosed to the Court.

The evidence produced at trial was that Waterside Apartments was not formerly TOWER 2450, but was a corporation which purchased all the assets of TOWER in bankruptcy and agreed to pay all of TOWER's creditors 100% on the dollar. GREENFIELD was a creditor of TOWER.

These two findings, one relating to an alleged prior stock interest in TOWER and the allegation that GREENFIELD had received an apartment as payment for services rendered by him for Debtor *prior to* the commencement of the Chapter X proceedings were the sole findings by the Bankruptcy Court upon which it concluded that GREENFIELD's failure to disclose in his fee application was a violation of the disclosure requirements contained in Bankruptcy Rule 10-215(b), warranting the vacating of the previously awarded fee.

The Bankruptcy Court's Order was appealed to the United States District Court, Southern District of

Florida, which Order was affirmed by the Court's Judgment of July 27, 1983, Appendix C.

The District Court's Judgment of affirmance was affirmed on appeal to the United States Court of Appeals, Eleventh Circuit, by its Judgment of affirmance dated October 18, 1984, Appendix D, Rehearing denied November 28, 1984, Appendix E.

From the Judgment of affirmance of the United States Court of Appeals, Eleventh Circuit, this Writ is sought.

REASONS FOR GRANTING THE WRIT

1. The Judgment of Affirmance of the United States Court of Appeals is in direct conflict with the disclosure requirements of Bankruptcy Rule 10-215(b).

For the sake of continuity, we restate Bankruptcy Rule 10-215(b):

> (b) **Disclosure of Compensation Paid or Promised to Attorney for Debtor**
>
> Every attorney for a debtor, whether or not he applies for compensation, shall file with the court on or before the first date set for the meeting held pursuant to Rule 10-212, or at such other time as the court may direct, a statement setting forth the compensation paid or promised him for the services rendered or to be rendered in connection with the case, the source of the compensation so paid or

promised, and whether the attorney has shared or agreed to share such compensation with any other person. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of his compensation with a member or regulation association of his law firm shall not be required.

Bankruptcy Rule 10-215(b) requires the attorney for Debtor to disclose *only* two matters:

(1) The attorney shall file with the Court on or before the first date set for the meeting held pursuant to Rule 10-212, or at such time as the Court may direct, a statement setting forth the compensation paid or promised to be paid him for the services rendered or to be rendered in connection with the case, the source of the compensation so paid or promised;

(2) and whether the attorney has shared or agreed to share such compensation with any other person.

GREENFIELD stated in the record and in his application for fees for services rendered Debtor in the Bankruptcy proceedings, that he had not been paid or promised to be paid by Debtor for services rendered for Debtor in the case. GREENFIELD in his Application for Fees stated he had not shared or agreed to share such compensation with any other person, fully complying with Rule 10-215(b), Appendix F.

There was no evidence presented to the Bankruptcy Court nor finding by the Bankruptcy Court in its Order of May 28, 1980, that GREENFIELD had received any

compensation or been promised any compensation to be paid from any source for his services rendered Debtor in the Bankruptcy case. There has never been an allegation, evidence or finding that GREENFIELD ever agreed to share any compensation he might receive for his services in the Bankruptcy case or any other case.

The Bankruptcy Court in its Judgment of May 28, 1980, made two findings of fact upon which it based its Judgment vacating its Order of May 16, 1980, awarding GREENFIELD fees, as shown by Paragraphs 4 and 5 as follows:

> 4. The Court finds as hereinafter set forth that there were matters that should have been made known to the Court that were not. On January 1, 1977, Leo Greenfield filed with the Miami National Bank a financial statement indicating that he was the owner of 333⅓rd shares of the stock of the Debtor. This Court was not aware of Greenfield's interest in the corporation and even if Greenfield was not the owner of said shares at the time of his application as alleged by him during these proceedings, the Court is of the opinion that Greenfield was duty bound under the provisions of Bankruptcy Rule 10-215(b) to disclose these facts to the Court.
>
> 5. Leo Greenfield's sworn Affidavit for Compensation indicated in Paragraph 5(e) that during the course of the entire bankruptcy proceeding and for at least two years prior to the institution of the reorganization petition, he had worked without benefit of payment of

> any fees. Testimony elicited at the hearing on the Application to Reconsider indicated that this was not the case. Leo Greenfield, by his own admission, testified that he had received an apartment, specifically apartment 1002 of the Waterside Apartments, formerly Tower 2450, which apartment was conveyed to Greenfield in consideration and for payment of services rendered by him to the Debtor prior to the commencement of the Chapter X proceedings. The Court is of the opinion that this matter should have been disclosed to the Court.

The District Court in affirming this Order simply found that the Bankruptcy Court had sufficient ground to exercise its equitable powers to set aside the fees awarded, Appendix C.

GREENFIELD appealed the District Court's Order of affirmance to the Eleventh Circuit and filed his Appellant's Brief, with Appendix. Neither the counsel for Appellee Trustee or the Special Counsel appointed by the Bankruptcy Court entered an appearance in the appeal to the Eleventh Circuit.

After a considerable amount of time in which Appellees could have responded to Appellant's appeal, the Eleventh Circuit, without oral argument, entered its Judgment of affirmance, Appendix D.

In reviewing the Judgment of the Eleventh Circuit, it is obvious that the Court misinterpreted the issue on appeal.

The Eleventh Circuit in its Judgment found that the fee application made by GREENFIELD was an application to the Bankruptcy Court to award him fees for services performed *prior to* the commencement of the Chapter X proceedings, reciting as follows:

> Because Greenfield sought compensation for services performed *prior to* the commencement of the Chapter X proceeding, we hold that he was duty bound to disclose all prior compensation paid or promised him for services rendered the debtor. Indeed, all compensation to Greenfield *prior to* the commencement of the Chapter X proceeding was material to the bankruptcy court's determination of reasonable attorney's fees and costs for services rendered by Greenfield *prior to* the commencement of the Chapter X proceeding.
>
> (Emphasis is the Court's)

If Greenfield had been seeking compensation for services rendered Debtor prior to the commencement of the Chapter X proceeding, then of course he would be duty bound to disclose to the Court what, if anything, he had been paid or promised to be paid for those services regardless of any rule.

However, GREENFIELD in his Application for Fees clearly stated he was applying for fees for services rendered Debtor in the Bankruptcy proceedings. The applicable recitations in the fee application are as follows:

> 2. This application is for the allowance of compensation for services rendered by the Law

> Offices of Greenfield, as attorney for Debtor in the in the Bankruptcy of Tower 2450, Inc.

and in Paragraph 5(j) GREENFIELD stated:

> 5(j) . . . No consideration is given in the enumeration of the hours set forth herein to the time expended and the value of the services performed prior to the institution of the proceeding . . . The undersigned verily further states he is an unsecured creditor as against the estate for the sum of $75,000.00 for services rendered prior to the institution of this proceeding *and now seeks reasonable compensation only in connection with this proceeding.*
>
> (Emphasis Supplied)

The Eleventh Circuit Court clearly misconstrued GREENFIELD's application to be an application for services rendered prior to the commencement of the Chapter X proceeding and the Bankruptcy Court's fee award was for services rendered prior to, rather than for, services rendered in the Chapter X proceeding.

Prior to the Eleventh Circuit Court's affirmance there has been no suggestion that the fee application and award of fees by the Bankruptcy Court was for any services other than for GREENFIELD's services rendered Debtor in the Chapter X proceeding.

No allegation was made in Appellees' Application to Vacate Fees that GREENFIELD was seeking fees for services rendered Debtor prior to the Chapter X proceeding.

The only issue tried by the Bankruptcy Court was whether or not GREENFIELD's failure to disclose that he had filed a financial statement dated January 1, 1977, with a banking institution indicating he was the owner of 333⅓ shares of stock in the Debtor's corporation and the fact that GREENFIELD had received an apartment for services rendered to Debtor prior to the Chapter X proceeding, was required to be disclosed by Bankruptcy Rule 10-215(b).

The Bankruptcy Court concluded that these two facts were required to be disclosed by the provisions of Rule 10-215(b) and vacated the fee awarded for services rendered in the Chapter X proceeding.

The District Court affirmed the Bankruptcy Court on the simple ground that the Bankruptcy Court had continuous authority to modify its own Orders and that there was sufficient grounds for the Bankruptcy Court to exercise its equitable powers to set aside the fee awarded. The District Court made no mention of a violation of Rule 10-215(b).

The Judgment affirming the District Court by the Eleventh Circuit, upon which this application for Writ of Certiorari is made, was entered on an issue never raised or suggested by the appellees, the Bankruptcy Court, the United States District Court or the record. Again, the Eleventh Circuit, in its affirmance, failed to rule on the question of whether or not the failure to disclose the two alleged facts upon which the Bankruptcy Court determined was in violation of Rule 10-215(b) was in fact a violation of this Rule.

The record will show that GREENFIELD never received the 333⅓ shares of Debtor's stock and that one Sandy Brous was the 100% stockholder of TOWER 2450, Inc. The record will also show that the apartment received by GREENFIELD was from Waterside Apartments, Inc., in partial payment of its obligation to pay off GREENFIELD's $75,000.00 unsecured claim against TOWER for prior services.

CONCLUSION

The United States Court of Appeals, Eleventh Circuit, in this cause, incorrectly interpreted the issue raised in this case, by construing GREENFIELD's fee application to be for an award of fees rendered to the Debtor for services rendered prior to the commencement of the Chapter X proceedings. The Court of Appeals failed to consider whether or not Bankruptcy Rule 10-215(b) was or was not violated by GREENFIELD upon his failure to disclose to the Bankruptcy Court of his filing a financial Affidavit a year and a half before the commencement of the Chapter X proceeding relating to a stock interest and his failure to disclose that he had received an apartment in partial payment of his creditor's claim for fees rendered Debtor prior to the commencement of the Chapter X proceeding.

There have been no appellate decisions in any jurisdiction holding that Bankruptcy Rule 10-215(b) requires the applicant for fees to disclose more than the two specific items required by the Rule. If the Opinion of the Bankruptcy Court in this case is good law, then no applicant for fees will ever know what additional disclosures are required to prevent the fees awarded to be vacated for failure to disclose under non-mentioned disclosure requirements of the Rule.

For these reasons a Writ of Certiorari should issue to review the Judgment and Opinion of the Court of Appeals, Eleventh Circuit, to order said Judgment vacated and to either reconsider its Judgment on the fee application being an application for an award of fees

for services rendered in the Chapter X proceeding or to reverse the Judgment or for other action as appropriate.

Respectfully Submitted

GREENFIELD & DUVAL
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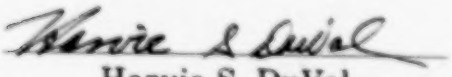
(305) 893-9270
Attorneys for Petitioner

By 
Harvie S. DuVal

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true copy of the foregoing was this 26th day of February, 1985, mailed to:

MARVIN S. CASSEL, ESQ.,
Attorney for Respondent
Suite 801, New World Tower
100 North Biscayne Boulevard
Miami, FL 33132
and
JOHN L. BRITTON, ESQ.,
Special Counsel
Southeast Financial Center
Suite 3000
Miami, FL 33131

By Harvie S. DuVal
Harvie S. DuVal

Appendix

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN
DISTRICT OF FLORIDA
BANKRUPTCY DIVISION

CASE NO. 78-302-BK-JLK-H

In the Matter of

TOWER 2450, INC.,

Debtor.

ORDER FOR DEBTOR'S ATTORNEY'S FEES

THIS CAUSE came on for hearing before me on the sworn Motion of Debtor's attorney to be awarded compensation as counsel for the Debtor and for reimbursement of certain costs heretofore advanced by them on behalf of the Debtor and the Court being fully advised in the premises, it is thereupon

ORDERED and ADJUDGED as follows:

1. That GREENFIELD & DUVAL, counsel for the Debtor be and is hereby awarded the sum of $43,000.00 as fair and reasonable compensation for their services rendered by them as counsel for the Debtor.

2. That GREENFIELD & DUVAL, counsel for the Debtor shall be reimbursed the costs heretofore advanced on behalf of the Debtor in the sum of $3,754.00.

3. That said sum shall be paid forthwith by THOMAS WOOD, Trustee, from the sums presently held by him on behalf of the Debtor.

DONE and ORDERED this 31 day of March, 1980, in Chambers, at Miami, Dade County, Florida.

SIDNEY M. WEAVER
BANKRUPTCY JUDGE

Copies Furnished To:

LAW OFFICES GREENFIELD & DUVAL
MARWIN S. CASSEL, ESQ.
THOMAS WOOD, Trustee

APPENDIX B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 78-302-BK-JLK-W-1
Proceedings Under Chapter X

In re:

TOWER 2450, INC.,

Debtor.

ORDER ON APPLICATION TO RECONSIDER FEES

THIS MATTER came on to be heard before this Court upon an Application filed herein requesting the Court to reconsider the Order of this Court entered on the 31st day of March, 1980 fixing fees for Greenfield & DuVal as counsel for the Debtor herein.

1. This Court has jurisdiction to reconsider the allowance and entertain the Application for Reconsideration by virtue of the provisions of Sections 57(k) and (1) of the Bankruptcy Act (11 U.S.C.A. Section 93(k) and (1)) as well as under the provisions under Bankruptcy Rule 10-401(q).

2. The Court also has jurisdiction to entertain said Application since no final decree has been entered in this cause and the estate is still being administered.

3. On March 13, 1980, the applicant Leo Greenfield filed in this proceeding his sworn Application for compensation. At the time of the filing of said Application, the Application and its contents were governed by the provisions under Bankruptcy Rule 10-215(b) which requires that a full disclosure be made by any applicant filing an application for attorney's fees in connection with the representation of the Debtor.

4. The Court finds as hereinafter set forth that there were matters that should have been made known to the Court that were not. On January 1, 1977, Leo Greenfield filed with the Miami National Bank a financial statement indicating that he was the owner of 333⅓rd shares of the stock of the Debtor. This Court was not aware of Greenfield's interest in the corporation and even if Greenfield was not the owner of said shares at the time of his application as alleged by him during these proceedings, the Court is of the opinion that Greenfield was duty bound under the provisions of Bankruptcy Rule 10-215(b) to disclose these facts to the Court.

5. Leo Greenfield's sworn Affidavit for Compensation indicated in Paragraph 5(e) that during the course of the entire bankruptcy proceeding and for at least two years prior to the institution of the reorganization petition, he had worked without benefit of payment of any fees. Testimony elicited at the hearing on the Application to Reconsider indicated that this was not the case. Leo Greenfield, by his own admission, testified that he had received an apartment, specifically Apartment 1002 of the Waterside Apartments, formerly Tower 2450, which apartment was conveyed to Greenfield

in consideration and for payment of services rendered by him to the Debtor prior to the commencement of the Chapter X proceedings. The Court is of the opinion that this matter should have been disclosed to the Court.

6. It is the opinion of the Court that each of the matters set out above constitute material facts which, if known to the Court, might have procluded the entry of any award in this case or, in the alternative, may have substantially reduced the award of fees so awarded.

7. Having made the above findings and conclusions, it is thereupon

ORDERED AND ADJUDGED as follows:

A. That this Court's Order of March 16, 1980, awarding fees to Leo Greenfield be and the same is hereby vacated and held for naught.

B. Leo Greenfield and/or Leo Greenfield, P.A. be and the same is hereby directed to forthwith turn over to the Trustee herewith, Thomas Wood, the sum of $43,000.00 as well as the sum of $3,750.00 awarded as costs.

IT IS FURTHER AWARDED:

C. That a hearing to determine what, if any, fees should be awarded to Leo Greenfield for services rendered to Debtor herein shall take place on Friday, June 25, 1982 at 1:30 p.m. at Bankruptcy Court, 51 Southwest First Avenue, Room 1409, Miami, Florida.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida this 28th day of May, 1982.

JUDGE SIDNEY M. WEAVER
BANKRUPTCY JUDGE

Copies furnished to:

Timothy J. Norris, Esq.
Marvin S. Cassel, Esq.
Louis Phillips, Esq.
Daniel Lampert, Esq.
John L. Britton, Esq.

APPENDIX C

[FILED JUL 27 1983]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 82-1630-Civ-JWK

IN RE:

TOWER 2450, INC.,

Debtor.

APPEAL BY LEO GREENFIELD AND
LEO GREENFIELD, P.A., etc.,

ORDER

Appellant, Leo Greenfield, appeals an Order On Application to Reconsider Fees which: 1.) vacated a prior order awarding appellant attorney's fees, 2.) directed that appellant return to the trustee (46,750.00 and 3.) set a new hearing to determine the fees, if any, to be awarded.

On appeal, appellant essentially alleges that the Bankruptcy Court lacked jurisdiction to enter the subject order and further contends that the order is unsupported by the evidence.

The well established principle of law is that bankruptcy courts, being essentially courts of equity, have the inherent and continuous power to modify

their own orders. See *Pepper v. Litton*, 308 U.S. 295, 60 S.Ct. 238, 84 L.Ed 281 (1939); *Federal Land Bank of Springfield v. Hansen*, 113 F.2nd 82 (2nd Cir. 1940); In re Parr, 1 B.R. 453 (1979). After a review of the Application to Reconsider Fees Awarded and the transcript of the hearing thereon, the Court finds that there was sufficient grounds for the bankruptcy court to exercise its equitable powers and set aside the fees awarded.

Accordingly, the Order on Application to Reconsider Fees appealed herein, is AFFIRMED.

DONE AND ORDERED in chambers at Miami, Florida, this 27th day of July, 1983.

/s/ James W. Kehoe

JAMES W. KEHOE
UNITED STATES DISTRICT JUDGE

CC: Timothy J. Norris, Esquire
Marwin S. Cassel, Esquire
Louis Phillips, Esquire
Britton, Cohen, et. al.,
Harvie S. DuVal, Esquire

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-5799
Non-Argument Calendar

TOWER 2450, INC.,

Plaintiff-Appellant,

versus

THOMAS D. WOOD

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida

(October 18, 1984)

Before HATCHETT, ANDERSON and CLARK, Circuit Judges.

PER CURIAM:

In this attorney's fees dispute, we review the district court's order affirming the bankruptcy court's order which vacated its prior attorney's fee award and ordered the attorney to return to the trustee all fees and costs received. We affirm.

Facts

As early as July 27, 1976, the law office of Leo Greenfield, P.A., was retained to provide legal services for Tower 2450, Inc. Greenfield contracted to receive one-third of the corporate stock of an 118-unit apartment building owned by Tower 2450, Inc. as compensation for legal services rendered the corporation at the time of incorporation. Greenfield alleges that he never received the stock promised.

On March 16, 1978, the law offices of Leo Greenfield, P.A., prepared and filed a voluntary petition in bankruptcy for Tower 2450, Inc. On May 17, 1978, Thomas D. Wood, trustee for the debtor, filed a list of stockholders and creditors of the debtor corporation, Tower 2450, Inc. The list stated that Sandy Brous held 100% of the authorized and issued stock and that the law offices of Leo Greenfield, P.A., was an unsecured creditor of the debtor's estate.

On March 13, 1980, Greenfield filed an Application by Debtor's Attorney for Allowance of Compensation. At the time of filing, the application and its contents were governed by Bankruptcy Rule 10-215(b). After a hearing on Greenfield's motion, the court entered an order awarding Greenfield $43,000 for attorney's fees and $3,754 as reimbursement for costs advanced on behalf of the debtor.

On November 18, 1981, the Miami National Bank, a creditor of Tower 2450, Inc., filed an application requesting the court to reconsider the fees and costs awarded Leo Greenfield, P.A., counsel for the debtor.

In reviewing the creditor's application, the court found that Leo Greenfield and/or Leo Greenfield, P.A., had failed to disclose all relevant matters to the court as required by Bankruptcy Rule 10-215(b). More specifically, the court found: (1) that on January 1, 1977, Leo Greenfield filed with the Miami National Bank a financial statement indicating that he was the owner of 333⅓ shares of stock of the debtor; and (2) that Greenfield received an apartment as payment for services rendered to the debtor prior to the commencement of the Chapter X proceedings. The aforementioned findings are not in dispute.

Prior to granting Greenfield's fee request, the court was not aware of Greenfield's interest in the corporation. The bankruptcy court held that Greenfield was obligated to disclose his receipt of an apartment as payment for services rendered by him to the debtor. The bankruptcy court concluded that information concerning the apartment and shares of stock constituted material facts which, if disclosed to the court, might have precluded the entry of an award in this case, or may have substantially reduced the amount of fees awarded.

The bankruptcy court vacated its order awarding fees and costs to Leo Greenfield and ordered Greenfield to return to the trustee the attorney's fees and costs received. Thereafter, the court scheduled a hearing to determine what, if any, fee should be awarded Leo Greenfield for services rendered the debtor. On appeal, the district court affirmed the bankruptcy court's order. This appeal enused.

Issue

The sole issue for our consideration is whether the district court erred in affirming the bankruptcy court's order on an Application to Reconsider Fees.

Discussion

Greenfield contends that the bankruptcy court and the district court erred in concluding that Bankruptcy Rule 10-215(b) required Greenfield to disclose, in his fee application, that on January 1, 1977, he filed a financial statement with the Miami National Bank indicating he was the owner of 333⅓ shares of stock of the debtor. Bankruptcy Rule 10-215(b) provides:

> (b) **Disclosure of Compensation Paid or Promised to Attorney for Debtor.**
>
> Every attorney for a debtor, whether or not he applies for compensation, shall file with the court on or before the first date set for the meeting held pursuant to Rule 10-212, or at such other time as the court may direct, a statement setting forth the compensation paid or promised him for the services rendered or to be rendered in connection with the case, the source of the compensation so paid or promised, and whether the attorney has shared or agreed to share such compensation with any other person. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of his compensation

with a member or regulation association of his law firm shall not be required.

In paragraphs 5(a), 5(e), and 5(j) of Leo Greenfield's application for attorney's fees and costs, he indicated that payment was sought for services performed prior to the bankruptcy proceeding. In paragraph 5(e) of Greenfield's application, he stated, "[t]hat during the course of the entire proceeding, *and for two years prior to the institution of the reorganization petition*, this counsel worked without benefit of payment of fees, except as to small items of cost incurred. . . ."

At the hearing on the Application to Reconsider Fees, Greenfield testified that apartment 1002 Waterside Apartments (formerly Tower 2450) was conveyed to Greenfield and/or Leo Greenfield, P.A., as consideration and payment for the services rendered by Leo Greenfield and/or Leo Greenfield, P.A., to the debtor prior to the commencement of the Chapter X proceedings. The bankruptcy court held, and the district court affirmed, that this matter should have been disclosed to the court. We agree.

Because Greenfield sought compensation for services performed *prior to* the commencement of the Chapter X proceeding, we hold that he was duty bound to disclose all prior compensation paid or promised him for services rendered the debtor. Indeed, all compensation to Greenfield *prior to* the commencement of the Chapter X proceeding was material to the bankruptcy court's determination of reasonable attorney's fees and costs for services rendered by Greenfield *prior to* the commencement of the Chapter X proceeding.

Greenfield's obvious attempt to circumvent and sidestep the spirit and intent of Bankruptcy Rule 10-215(b) will not be upheld by this court. Accordingly, we hold that the district court correctly concluded that sufficient grounds existed for the bankruptcy court to exercise its equitable powers and set aside the fees awarded Greenfield. The judgment of the district court is

AFFIRMED.

APPENDIX E

[FILED NOV 28 1984]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-5799

IN RE: TOWER 2450, INC.,

Debtor,

LEO GREENFIELD & LEO GREENFIELD, P.A.,

Plaintiffs-Appellants,

versus

THOMAS D. WOOD,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida

ON PETITION FOR REHEARING

(November 28, 1984)

Before HATCHETT, ANDERSON and CLARK, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT

/s/ [Illegible] Hatchett
United States Circuit Judge

APPENDIX F

[FILED MAR 14 _____]

IN THE UNITED STATES
DISTRICT COURT IN AND FOR
THE SOUTHERN DISTRICT OF FLORIDA

IN PROCEEDINGS UNDER CHAPTER X

CASE NO. 78-302-Bk-JLK-H

In the Matter of:

TOWER 2450, INC., a Florida corporation,
Debtor.

APPLICATION BY DEBTOR'S ATTORNEY FOR ALLOWANCE OF COMPENSATION

TO: THE HONORABLE SIDNEY M. WEAVER
BANKRUPTCY JUDGE

The undersigned, LEO GREENFIELD, attorney for the debtor, respectfully represents:

1. Your applicant has been the attorney for the debtor since 1975 and has rendered services to the debtor from the 16th day of March, 1978, the date of the filing of the petition, and for several years prior thereto.

2. This application is for the allowance of compensation for services rendered by the Law Offices of Leo Greenfield, as attorney for the debtor in the bankruptcy of TOWER 2450, INC.

BEST AVAILABLE COPY

3. The applicant, in addition to personally handling all of the matters and things as set forth on the schedules attached hereto, employed other members of his law firm, as well as secretaries and para-legal persons in pursuit of the duties and activities of the debtor, and, as a result of such services, the estate has been saved substantial sums of money, and the Chapter X reorganization proceeding has successfully resulted in payment of all secured and unsecured creditors, with the exception of the Miami National Bank, whose claim still remains to be resolved in litigation before this Court.

4. That all of the services performed by your applicant were rendered personally by your applicant or under his direction by members of his staff, and were services performed for and on behalf of the debtor corporation.

5. In applying for the award of compensation, your applicant has taken into consideration various factors which shall be hereinafter enumerated and which your applicant requests that the Court will consider. Said factors are as follows:

(a) Prior to the filing of the petition for reorganization under Chapter X on the 16th day of March, 1978, the undersigned had defended a foreclosure of mortgage instituted by Life Insurance Company of Virginia, a secured creditor herein; that in connection with the said foreclosure, the following matters were accomplished:

(i) A suit was instituted for the appointment of a receiver in the Circuit Court of the Eleventh

Judicial Circuit, in and for Dade County, Florida, by the said Life Insurance Company of Virginia. This suit was dismissed with prejudice. The plaintiff then appealed the Order of Dismissal to the District Court of Appeal of Florida, Third District. The Order of Dismissal was sustained by the District Court of Appeal of Florida, Third District. The plaintiff thereafter sought certiorari in the Supreme Court of the State of Florida, which petition was denied. The appellate proceedings above described, including the petition for certiorari to the Supreme Court of Florida, occurred subsequent to the filing of the petition under Chapter X in the within cause.

(ii) After dismissal of the above described proceeding with prejudice, the plaintiff, Life Insurance Company of Virginia, instituted a second suit to partially foreclose the mortgage then held by the said Life Insurance Company of Virginia. As part of the said proceeding, the said Life Insurance Company of Virginia sought the appointment of a receiver, which was denied by the Cicuit Court as a result of the legal effort asserted by the undersigned counsel. That during the period of the proceeding above set forth, the sum of approximately $160,000.00 was accumulated in various accounts maintained jointly with Life Insurance Company of Virginia, and this sum ultimately inured to the benefit of this estate.

(iii) That the petition for reorganization filed on the 16th day of March, 1978, was contested at great length by the secured creditor, Life Insurance Company of Virginia, through a contested good faith proceeding. As a result of the efforts of the debtor's counsel, the debtor prevailed in connection with the said proceeding

and precluded the said Life Insurance Company of Virginia, a secured creditor and holder of the first mortgage in the principal sum of $2,549,000.00, from foreclosing the said property, which foreclosure would have, undoubtedly, resulted in a situation whereby all creditors of the debtor would have been wiped out, and the creditors would have received little or nothing as a result of the said actions of Life Insurance Company of Virginia in successfully foreclosing the said mortgage.

(b) The total secured debt as against the debtor's estate was as follows:

First Mortgage: Life Insurance Company of Virginia	$3,543,011.22
Second Mortgage: Life Insurance Company of Virginia	$ 114,004.32
Third Mortgage: Southeast First National Bank of Miami	$ 825,000.00
Fourth Mortgage: Samuel Kaufman, et al.	$ 360.069.69
TOTAL SECURED INDEBTEDNESS	$4,842,085.23

That, in addition, there was then outstanding against the said estate unsecured claims of approximately $750,000.00, so that the total indebtedness, both secured and unsecured, was of the amount of approximately $5,592,085.23.

(c) That thereafter, during the course of the proceeding, the Court, upon application, set a sale of the property and had considered accepting an offer for the sale of the property of $4,025,000.00, so that if the sale had been concluded at that date, the secured creditor, to-wit: Life Insurance Company of Virginia, would have received basically all of the sums due to it, and the remaining creditors, including the second, third and fourth mortgagors, would have received little or no payment as against their debt, and the unsecured creditors would have received nothing at all.

(d) That as a result of the efforts of the undersigned in appealing the Order of the Bankruptcy Judge to the U.S. District Judge, a stay of proceeding was granted, and, as a result of the stay of proceeding, a transaction was completed through the efforts of the undersigned counsel working in conjunction with other persons, whereby all claims of all creditors were satisfied with some reasonable discount as to each, with the exception of the claim of Miami National Bank, which yet remains to be disposed of.

(e) That during the course of the entire proceeding, and for two years prior to the institution of the reorganization petition, this counsel worked without benefit of payment of fees, except as to small items of costs incurred. That in the proceedings prior to the institution of the bankruptcy, the undersigned counsel expended in excess of 300 hours in matters pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, as well as in matters pending in the District Court of Appeal of Florida, Third District, and in the Supreme Court of the State of Florida. See schedule attached, page 38 of Exhibit.

(f) That in addition thereto, during the course of this proceeding, the undersigned counsel was the principal counsel defending against the sale of the property at a price less than its true value. That the undersigned counsel was, as a matter of fact, in an adversary position with counsel for the trustee, since counsel for the trustee, after denial by the Court of a proposal to sell the units free and clear, took the position that a quick sale of the property at the $4,025,000.00 price would be in the best interest of the estate. It was ultimately determined, as a result of the efforts of the undersigned, that the value of the property was substantially higher, and the estate was greatly benefited to the extent of an amount in excess of $1,000,000.00, plus the ultimate disposition of the claim of the Miami National Bank by virtue of the undersigned's efforts in resisting the efforts to dispose of the property at the price indicated. That the closing of the sale of the property by the estate was handled by this counsel. That in connection therewith, approximately fifty hours of time were expended by counsel for which no payment was received by counsel, nor is such time included in the time computations attached hereto.

(g) That during the entire proceeding, the undersigned worked constantly with the trustee and other parties interested in the proceeding, as well as with counsel for the trustee, various tenants in the building, other potential purchasers, and numerous other parties in connection with preserving the estate to liquidate same on the highest possible basis.

(h) That the undersigned has been a practicing attorney in Dade County, Florida, for a period of 32 years and has on his staff various skilled persons who

assisted him in conjunction with the appropriate and proper handling of the within estate.

(i) Your applicant is totally cognizant of the fact that all compensation awarded in bankruptcy proceedings should be in the spirit of economy and conservatism. It is the duty of the Bankruptcy Judge to keep those factors in mind in awarding reasonable compensation. The undersigned submits that the amount sought herein for the services rendered in view of the results accomplished for the estate are extremely reasonable.

(j) That attached hereto and made a part hereof is a detailed explanation and schedule of hours expended and services performed by your applicant and members of his staff, from the preparation for filing of the Chapter X proceeding commencing on March 14, 1978, two days before the actual filing of the petition, to the date hereof. No consideration is given in the enumeration of the hours set forth herein to the time expended and the value of the services performed prior to the institution of the proceeding, except as briefly mentioned in Paragraph 5(e) hereof and set forth at Page 38 of the schedule attached hereto. The undersigned verily further states that he is an unsecured creditor as against the estate for the sum of $75,000.00 for services rendered prior to the institution of this proceeding and now seeks reasonable compensation only in connection with this proceeding. That the undersigned would show that in connection with the within proceeding, he personally has expended a total of 462 hours, and that other counsel on his staff has expended 93 hours, so that counsel has expended a total time of 555 hours in pursuit of the matters pertaining to the estate. That the schedule of time and the various incidental matters are set forth

on a schedule attached hereto and included in this application.

(k) That in light of all of the above, and in accordance with the schedule attached hereto, especially taking into consideration the time that has been expended on this matter, the results achieved, and the tremendous burdens and pressures of time placed upon your applicant to sustain the position of the debtor, your applicant believes that a reasonable, conservative and economical fee by way of compensation for the services rendered herein is the amount of $48,325.00. That the trustee and the attorney for the trustee have received comparable amounts, and the undersigned believes that the services of debtor's counsel to the estate were comparable to the services of trustee's counsel. The foregoing computations are based on a billing rate of $100.00 per hour for the undersigned counsel, and $75.00 per hour for other counsel within the undersigned's staff. That no allocation of time has been made for secretaries, para-legals, or any other type of services rendered, which, under the circumstances, were voluminous and numerous.

(l) Your applicant represents to the Court that it will not, in any form, share, or agree to share, in the compensation of any person rendering services in this proceeding or in connection with such proceedings.

(m) That in addition to the foregoing services rendered, the undersigned has advanced the sum of $4,755.37, as costs in connection with the various litigations handled by the undersigned. Said costs are more fully set forth on Page 37 of the itemized statement attached hereto and made a part of this application.

WHEREFORE, your applicant prays that he be awarded compensation to the extent of $48,325.00, for the services rendered herein as attorney for the debtor, together with costs in the amount of $4,755.37 heretofore expended and advanced on behalf of the debtor. That such services will constitute full payment for services rendered to the debtor in connection with the proceeding, including the ultimate disposition of all matters pertaining to the closing out of this estate.

GREENFIELD & DuVAL
Attorneys for Debtor
1680 Northeast 135th Street
North Miami, Florida 33161

By /s/ Leo Greenfield
LEO GREENFIELD

STATE OF FLORIDA :
SS
COUNTY OF DADE :

BEFORE ME, the undersigned authority, personally appeared LEO GREENFIELD, who upon oath deposes and says that the allegations of the foregoing application are true and correct to the best of his knowledge, information and belief.

/s/ Leo Greenfield
LEO GREENFIELD

SWORN TO AND SUBSCRIBED before me this 13 day of March, 1980.

/s/ Louise M. Kittendorf
NOTARY PUBLIC,
State of Florida

My commission expires:
July 25, 1980

I HEREBY CERTIFY that a true copy of the foregoing was this 13th day of March, 1980, mailed to:

MARVIN S. CASSEL, ESQ.
Suite 1011 New World Tower
100 N. Biscayne Blvd.,
Miami, Florida 33131

LAW OFFICES
GREENFIELD & DUVAL
1680 N.E. 135th Street
North Miami, Florida 33181
Attorneys for Debtor

By /s/ Leo Greenfield
Leo Greenfield

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Proceedings Under Chapter X

No. 78-302-Bk-JLK-W-1

In the Matter of:

TOWER 2450, INC.,

Debtor.

APPLICATION FOR THE COURT TO RECONSIDER FEES AWARDED TO COUNSEL FOR THE DEBTOR AND VACATE THE SAME, AND DIRECT COUNSEL FOR THE DEBTOR TO RETURN TO THE ESTATE ALL FEES PAID UNDER THE AWARD MADE BY THE COURT

COMES NOW, MIAMI NATIONAL BANK, by and through its undersigned counsel, a creditor in these Chapter X proceedings (commenced prior to the enactment and effective date of the Bankruptcy Code (*11 U.S.C.A. Sec. 101, et seq.*), which would classify these proceedings as proceedings continuing under and subject to the Bankruptcy Act of 1898, as Amended (old *11 U.S.C.A. Sec. 1, et seq.*)), and files this its Application for this Honorable Court to reconsider and set aside its Order allowing fees to GREENFIELD & DUVAL, as attorneys for said Debtor (annexed hereto and made a part hereof as Exhibit 1).

These proceedings being Chapter X proceedings under the Bankruptcy Act, are subject to the provisions of said Act (*11 U.S.C.A. Sec. 501, et seq.*). All statutory references contained in this instant pleading are to sections of the Bankruptcy Act and the Bankruptcy Rules in effect and applicable at all times relevant to these proceedings.

In support of this Application it will be shown unto this Honorable Court:

1. That the said MIAMI NATIONAL BANK is a creditor in these proceedings and in accordance with *Bankruptcy Rule 10-210(a)* has standing to be heard.

2. That in accordance with *Sections 57k and l* of the Bankruptcy Act (*11 U.S.C.A. Sec. 93k and l*), *Bankruptcy Rule 10-401(g)* and *Bankruptcy Rule 307*, this Court has jurisdiction to reconsider the allowance of any administration claims heretofore entered by the Court and paid by the Trustee.

3. These proceedings and the estate are still subject to the jurisdiction of this Court since no final decree closing the same has been entered, and in fact the instant estate is still being administered.

4. This Court's Order (Exhibit 1) was entered in accordance with the Court's jurisdiction under *Bankruptcy Rules 10-215(a) and 10-216*, and it will hereinafter be shown that the fee applicant LEO GREENFIELD, attorney for the Debtor, failed to comply with the provisions of said Rules. It will further be shown that the said fee applicant LEO GREENFIELD failed to comply with the provisions of *Section 62d* of the Bankruptcy Act (*11 U.S.C.A. Sec. 102d*).

5. Annexed hereto and made a part hereof as Exhibit 2 is the Application by Debtor's Attorney for Allowance of Compensation (without the attachments thereto) filed by LEO GREENFIELD. The application is deficient since it fails to include the affidavit required by *Section 62d* of the Act and *Bankruptcy Rule 10-215(a)*.

6. The notice of hearing on the fee application given by the fee applicant noticed but one single party, to wit: counsel for the Trustee, and therefore fails to meet the requirements of *Bankruptcy Rule 10-216*, in that said Rule requires that all parties materially and adversely affected by the proceedings are entitled to notice of all hearings on all fee applications. Undersigned counsel for MIAMI NATIONAL BANK does admit that, without notice to his client or to himself, he was present at the fee hearing, along with counsel for the Trustee, at the time the Court entertained said fee application (Exhibit 2 hereto); however, at said hearing undersigned counsel had not had the opportunity to carefully examine the application. That since the time of said hearing, in connection with the administration of WATERSIDE APARTMENTS, INC., as well as the instant cause, facts have been uncovered which indicate that there has been concealed and withheld from this Court basic facts which, if known to the Court at that time, would have precluded the entry of the said Order of March 31, 1980 awarding fees (Exhibit 1, supra).

7. In support of this Application to this Court to vacate its order of March 31, 1980 and to direct the recipient of the fees and costs reimbursement to return the same to the estate, the Court's attention is called to the following facts and legal requirements:

a. *Bankruptcy Rule 10-215(b)* requires that a full disclosure be made by any applicant for attorneys fees for Debtor representation. It will be shown to this Court that such full disclosure was withheld from the Court; thereby, without knowledge which would have precluded the entry of the said Order, the Court entered the same.

b. It was never disclosed to this Court that LEO GREENFIELD (the sole applicant for fees for attorney for the Debtor) was the owner of 333⅓ shares of TOWER 2450, INC. Annexed hereto and made a part heref as Exhibit 3 is a financial statement dated January 1, 1977, but represented to be effective as of September 29, 1977 by the said LEO GREENFIELD.

c. This Court was led to believe that the sole stockholder of 100% of the authorized and issued outstanding stock of TOWER 2450, INC. was Sandy Brous (see Court Paper 16 filed in these proceedings).

d. In October 1976 a Final Judgment was entered by the Circuit Court of the 11th Judicial Circuit of Florida in and for Dade County, against LEO GREENFIELD in favor of Henry Frank, in connection with litigation pending since 1971, in the amount of $100,000, a copy of which is annexed hereto and made a part hereof as Exhibit 4.

e. On February 24, 1977 a Final Judgment was entered by the Circuit Court of the 11th Judicial Circuit of Florida in and for Dade County, against LEO GREENFIELD in favor of John U. Vasquez for $50,000, a copy of which is annexed hereto and made a part hereof as Exhibit 5.

f. In November 1978 in both of said Circuit Court cases, a Corrected Order to Implead Third Parties was entered by Judge Grossmen, a copy of which is annexed hereto and made a part hereof as Exhibit 6. On February 22, 1979, Judge Grossman entered an Order in connection with supplementary proceedings to execution, a copy of which is annexed hereto and made a part hereof as Exhibit 7.

8. That during the pendency of these proceedings, which were commenced March 16, 1978, the fee applicant LEO GREENFIELD had full and complete knowledge of the entry of the foregoing described judgments, and at the time of the application for fees had full and complete knowledge of the orders entered by the Circuit Court in connection with said judgments.

9. The Application (Exhibit 2, paragraphs 5 (a) (i) (ii), 5 (e) and 5 (j)), indicates that payment was sought for services performed prior to the institution of the proceedings by the applicant for and on behalf of the Debtor. Testimony adduced in this Court from the said LEO GREENFIELD, in connection with objections to the accounting rendered by Mr. Greenfield as Escrow Agent (April 2, 1981, pages 60, 62), contain an admission that Apartment 1002 Waterside Apartments (formerly TOWER 2450) was conveyed to Mr. Greenfield and/or LEO GREENFIELD, P.A. as consideration and payment for the services rendered by LEO GREENFIELD and/or LEO GREENFIELD, P.A. to the Debtor prior to the commencement of these Chapter X proceedings. In effect, this testimony indicates that there was a withholding from the Court that the said consideration received by LEO GREENFIELD and/or LEO GREENFIELD, P.A., was in settlement of a fee owed

to LEO GREENFIELD and/or LEO GREENFIELD, P.A. prior to the commencement of these proceedings or for services rendered in these proceedings. Annexed hereto and made a part hereof as Exhibit 8 are copies of the relevant pages of the transcript of said April 2, 1981 hearing.

10. In accordance with this Court's order, Mr. Greenfield filed an accounting, which was unsigned and indicates that Apartment 1002 was sold for $41,400, concealing from this Court that the actual consideration involved in the transfer of this unit was for sums considerably more than the $41,400, which sums, as has heretofore been shown, were for the benefit of LEO GREENFIELD and/or LEO GREENFIELD, P.A. A copy of said accounting is annexed hereto and made a part hereof as Exhibit 9.

11. In an effort to settle the foregoing Circuit Court judgments (Exhibits 4 and 5, supra), LEO GREENFIELD entered into a settlement agreement which required that LEO GREENFIELD, P.A. assign its Assignment for Sale for Unit 1002 of Waterside Tower Condominium (formerly TOWER 2450). Annexed hereto and made a part hereof as Exhibit 10 is an Affidavit of Burton Young dated July 22, 1981, to which is annexed the Settlement Agreement of August 13, 1979; the Agreement for Sale dated July 2, 1979 between LEO GREENFIELD, P.A. and WATERSIDE APARTMENTS, INC. for a consideration of $73,500; Warranty Deed dated December 12, 1979 executed by WATERSIDE APARTMENTS, INC. as grantor and City National Bank of Miami, as Trustee Under Land Trust No. 5004645; Land Trust Agreement No. 5004645; and a Policy of Title Insurance issued by Pioneer National

Title Insurance Company. Annexed hereto and made a part hereof as Exhibit 11 is a copy of correspondence dated April 7, 1981 addressed to Louis Phillips, counsel for the Trustees of WATERSIDE APARTMENTS, INC., which explains the procedures utilized to transfer said Apartment 1002.

12. That all of the foregoing constitute a material withholding of facts both before and after the award of fees, which if known to the Court would have precluded the entry of any award.

13. It is respectfully alleged and submitted to this Court that LEO GREENFIELD, in accordance with this Court's Order of March 31, 1980 (Exhibit 1) and the Application filed upon which this Court allowed the fees, concealed from this Court the domination and control of WATERSIDE APARTMENTS, INC. by LEO GREENFIELD and/or LEO GREENFIELD, P.A. and/or GREENFIELD & DUVAL. That said facts further indicate that consideration was received by the fee applicant which was not disclosed to this Court, which in and of itself was sufficient to support a denial of all fees.

14. It will further be shown unto this Court that at the time of the commencement of these proceedings LEO GREENFIELD of LEO GREENFIELD, P.A. was the attorney of record representing the said Debtor; that no documentation or other pleading was ever filed in this case which would indicate that GREENFIELD & DUVAL, the recipient of the attorneys fee award, was entitled to the same, since the application was made solely in the name of LEO GREENFIELD.

15. In addition to the foregoing, the said applicant, in accordance with the doctrine enunciated by the United States Court of Appeals for the Fifth Circuit in *Zylstra v. Safeway Store, Inc.*, 578 F.2d 102 (1978), is not entitled to a fee for self-representation.

16. We further call to the Court's attention that as a matter of law, conduct as displayed by this record precludes the award of fees where there is a clear breach of the fiduciary obligations owed by the applicant to the Bankruptcy Court. See *Matter of Futuronics Corp.*, 665 F.2d 463 (2nd Cir. 1981).

WHEREFORE, in the premises considered, it is prayed that this Court will, after notice and hearing, vacate its Order of March 31, 1980 and direct the law firm of GREENFIELD & DUVAL to return to this estate the fee award in the amount of $43,000 and the reimbursement for costs in the amount of $3,754 which were allowed as administration costs in these proceedings.

I HEREBY CERTIFY that copies of the foregoing were this 18th day of November, 1981 mailed to Leo Greenfield, Esq., Greenfield and DuVal, P.A., 1680 N.E. 135th Street, North Miami, Florida 33161; Timothy J. Norris, Esq., Mershon Sawyer Johnston Dunwody & Cole, 1600 Southeast First National Bank Building, Miami, Florida 33131; Marwin S. Cassel, Esq., 100 North Biscayne Boulevard, Miami, Florida 33131; Louis Phillips, Esq., 908 Israel Discount Bank Building, Miami, Florida 33131; and Brown and Malman, 1400 AmeriFirst Building, One S.E. Third Avenue, Miami, Florida 33131.

MYERS, KAPLAN, LEVINSON,
KENIN & RICHARDS
IRVING MARK WOLFF, P.A.,
Of Counsel
Attorneys for
MIAMI NATIONAL BANK
1428 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 371-9041

By /s/Irving M. Wolff
IRVING M. WOLFF

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APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PROCEEDINGS UNDER CHAPTER X

NO. 78-302-BK-JLK-W-1

In the Matter of:

TOWER 2450, INC.,

Debtor.

RESPONSE TO APPLICATION FOR THE COURT TO RECONSIDER FEES AWARDED TO COUNSEL FOR THE DEBTOR AND VACATE THE SAME

COMES NOW the Respondent, GREENFIELD & DUVAL, and file this, its response to the application heretofore made for the Court to reconsider fees awarded to counsel for the Debtor and vacate the same and direct counsel for the Debtor to return to the estate all fees paid under the award made by the Court, and would show:

1. That the statements by Irving M. Wolff that Leo Greenfield failed to comply with the provisions of *Bankruptcy Rule* 10-215(a) and 10-216, are without basis in fact. That a full disclosure of all matters and things were made to the Court.

2. That the fee as awarded covered only that period of time from the institution of the Petition for

Reorganization on March 13, 1978, up to the date of the fee application.

It was disclosed to the Court and there appears in the Schedule of Accounts Payable the fact that the Law Offices of Leo Greenfield, P.A. was an unsecured creditor at the date the Petition was filed to the extent of $76,822.00, and that the compensation awarded in connection with the reorganization proceeding was totally unrelated to the status of the said Leo Greenfield, P.A., as an unsecured creditor.

3. In the said fee application it was pointed out that the applicant had rendered services to the Debtor from 1975 up to the 16th day of March, 1978, but that, nevertheless, the fee application covered only those periods of time commencing with the filing of the Petition for Reorganization.

Paragraph 5(A) of the Petition provided that prior proceedings had occurred and that substantial litigation had been incurred by the Debtor and that counsel worked without benefit of payment of fees except as to small items of costs.

The Schedules filed on behalf of Tower 2450, Inc., disclosed the unsecured indebtedness due to the said Leo Greenfield, P.A., of $76,822.00. The Schedules filed for payment of attorneys' fees disclosed only those matters which had occurred in the Bankruptcy Court.

The assignment or transfer of the apartment was a matter subsequent to the conveyance of the property in Bankruptcy from Tower 2450, Inc., to Waterside Apartments, Inc., and was a payment to Leo Greenfield,

P.A., for the long outstanding payment due to the said unsecured creditor in Tower 2450, Inc., in accordance with provisions of transfer from Tower 2450, Inc., to Waterside Apartments, Inc., pursuant to the agreement that all unsecured creditors would be paid including the claim of Miami National Bank.

The conveyance by Waterside Apartments, Inc., was therefore in fulfillment of that obligation of Tower 2450, Inc., and was part of the consideration for transfer of the property by Tower 2450, Inc., c/o Waterside Apartments, Inc.

That the only remaining obligations yet to be fulfilled by Tower 2450, Inc., pursuant to the escrow arrangement was the payment to Miami National Bank of the sum found to be due for which a total of $625,000.00 was to be held in escrow in order to make payment of such outstanding claim.

5. That sufficient sums were on hand by way of property or funds to fulfil the establishment of the escrow and the payment of the balance due to the unsecured creditor. The filing of the Petition interrupted the payment of the sums due to each of said creditors.

6. The financial statement of Leo Greenfield, P.A., attached to the Petition as Exhibit "3", showing the interest of Leo Greenfield, P.A., in 333⅓ shares of stock of Tower 2450, Inc., is dated January 1, 1977. The Voluntary Petition under Chapter X of the Bankruptcy Act was filed on March 16, 1978. At the time of the filing of the Bankruptcy Petition and for some time prior thereto, Leo Greenfield, P.A., had relinquished its interest in the shares of stock of Tower 2450, Inc., in

consideration of the acknowledgment of the unsecured debt of $76,822.00.

That such agreement was made long prior to the filing of the Petition for Reorganization and when it was anticipated that the mortgage of Life of Virginia was to be paid off and the property of Tower 2450, Inc., converted to condominium. In lieu of payment of the said sums in cash the then controlling persons of Waterside Towers, Inc., have elected to pay the said claim by transfer of two apartments units, one of which has been so transferred. At the time of filing of the said Petition for Reorganization all shares of stock of Tower 2450, Inc., were held by Sandy Brous, as was so indicated in the said Schedules.

7. That the statements to the effect that there was a withholding from the Court or a breach of a fiduciary obligation to the Court is without basis in fact.

8. That all of the matters pertaining to the transfer of the unit was immaterial to the matter of attorneys' fees in connection with the reorganization since the said Petition for Reorganization listed Leo Greenfield, P.A., as an unsecured creditor, and that the transfer of the said unit was appropriate and proper under the circumstances as existed at that time and as presently exist.

9. The statement that the funds were wrongfully paid to Greenfield & Duval is without basis in fact since Leo Greenfield, P.A., is actually the same corporate entity, now doing business as Greenfield & Duval.

10. The services rendered and the funds so paid emanate from and payment was received by, the same corporate entity.

11. The Respondent would show that there is no breach of fiduciary relationship nor material withholding of facts, nor were any sums received as a fee in the proceeding which were not disclosed to the Court nor was any act ever committed in violation of the Bankruptcy Rules nor any case law.

That the application was made in good faith and the sum was awarded with consent of now dissenting counsel; in fact, at the time of the award, the Court reduced down Applicant's fee and indicated that under the circumstances no objection would be made if counsel was able to obtain additional fees from "his client".

WHEREFORE, the Respondent moves that the said application be dismissed, or in the alternative, that the said application be denied.

I HEREBY CERTIFY that a true copy of the foregoing was this 23rd day of December, 1981, mailed to:

TIMOTHY J. NORRIS, ESQ.
MERSHON, SAWYER, JOHNSTON,
DUNWODY & COLE
1600 Southeast First National Bank Bldg.
Miami, Fla. 33131

MARWIN S. CASSEL, ESQ.
100 North Biscayne Bldg.
Miami, Fla. 33131

LOUIS PHILLIPS, ESQ.
908 Israel Discount Bank Bldg.
Miami, Fla. 33131

BROWN & MALMAN
1400 AmeriFirst Bldg.
One S.E. 3rd Ave.
Miami, Fla. 33131

MYERS, KAPLAN, LEVINSON, KENIN & RICHARDS
IRVING MARK WOLFF, P.A.,
of Counsel
1428 Brickell Ave.
Miami, Fla. 33131

GREENFIELD & DUVAL
1680 N.E. 135th Street
North Miami, Fla. 33161

By /s/ LEO GREENFIELD
Leo Greenfield